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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

KEVIN CURRY,

Plaintiff and Appellant,

v.

WALNUT VALLEY TRAILERS et al.,

Defendants and Respondents.

B169582

(Los Angeles County
Super. Ct. No. KC040428)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Peter J. Meeka, Judge. Affirmed.

J. T. Orr II for Plaintiff and Appellant.

Brownwood, Chazen & Cannon and Randall L. Brownwood for Defendants and Respondents.

On November 14, 2002, appellant Kevin Curry sued respondent Walnut Valley Trailers for breach of written and oral contracts and for negligence. Factually, he alleged that respondent had agreed to provide safe and secure storage of a motor vehicle and trailer he stored at respondent's storage facility, and had breached that contract by failing to provide safe and secure storage, and that respondent was negligent in that it failed to take the steps necessary to provide safe and secure storage.

Respondent moved for summary judgment, proposing as undisputed that the storage lease agreement which appellant signed provided that "Landlord does not take custody, control, possession or dominion over items stored in Space and does not agree to provide protection for the item stored," and that "Landlord will not be responsible or otherwise liable, directly or indirectly, for loss or damage to property of Tenant due to . . . theft . . . regardless of whether such loss or damage may be caused or contributed to by the negligence of Landlord, its agents or employees."

Appellant's reply was based on the theory that the written lease agreement was no longer in effect when his property was stolen, but that the applicable contract was an oral agreement to provide parking and security for the property. He also argued that any exculpatory clause in the written contract was contrary to the public policy expressed in Civil Code section 1668.

Respondent's responsive pleading contended both that appellant's pleading was not timely or properly filed and served and should be disregarded, and that summary judgment should be granted because appellant did not attach a separate statement of facts, or offer any evidence in support of his theory. Thus, no fact was disputed. Respondent also argued that the contract was not against public policy, citing *Cregg v. Ministor Ventures* (1983) 148 Cal.App.3d 1107, which held that Civil Code section 1668 does not apply to storage leases and that exculpatory clauses in such leases do not violate public policy.

At oral argument on the motion, counsel for appellant agreed that the opposition was not served timely or properly, but asked for relief under Code of Civil Procedure section 473.

The court granted the summary judgment motion, finding that the response was not timely filed and was disallowed. The court also found that there was no oral contract between plaintiff and the defendant, and the plaintiff had failed to "identify with detail the defendant contracting party he dealt with in the creation of the oral contract." Further, the court found "no triable issues respecting the existence of an oral contract" . . . and "ample evidence supporting the creation of a written contract between plaintiff and defendant. There is no evidence of any promise for increased security. The written agreement forecloses the assertion of promises or inducements unless in writing and authorized by an officer or general partner of the defendant."

On appeal, appellant argues that the trial court erred in denying his request for relief under Code of Civil Procedure section 473. We can see no reversible error. Despite the ruling disallowing the response, the trial court clearly read and considered the pleading appellant filed, and made a ruling on the merits. Appellant points to no flaw in the court's substantive ruling, and we can see none. The contract proffered by respondent establishes that there was no breach of contract and no negligence.

Disposition

The judgment is affirmed.

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ARMSTRONG, J.

We concur:

TURNER, P.J.

KRIEGLER, J.*

* Judge of the Superior Court of Los Angeles County, assigned by Chief Justice pursuant to article VI, section 6, of the California Constitution.